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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/656,805

09/07/2000

Richard Niccolai

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7590

04/05/2006

PEARNE & GORDON LLP

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CLEVELAND, OH 44114-3108

EXAMINER

DABNEY, PHYLESHA LARVINIA

ART UNIT

PAPER NUMBER

2615

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/656,805	<b>Applicant(s)</b> NICCOLAI, RICHARD	
	<b>Examiner</b> Phylesha L. Dabney	<b>Art Unit</b> 2615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 53-69 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 53-69 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

This action is in response to the amendment received on 10 March 2006 in which claims 53-69 are pending, claims 1-52 are cancelled.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 53-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Juneau (U.S. Patent No. 6,022,311) in view of Applicant submitted Article: "Multi Component Injection Molding Rigid/Rigid and Rigid/Flexible Combinations" dated 18 October 1999.

Regarding claims 53-56 and 68-69, in figure 1, Juneau teaches a hearing device having a first and second part (elastomers; items 1 and 2; col. 5 line 45 through col. 6 line 31). Juneau does not specifically teach how to manufacture the two part hearing aid device. However, the examiner takes official notice that it is known in the art any plastic process such as blowmolding, rotomolding thermosetting, injection molding, etc., to produce hearing aid shells and thereby obtain the desired consistency. More specifically, the article teaches a specific type of injection molding, i.e. multicomponent molding, etc., for forming and joining elastomeric materials utilizing specialized machines that allow modification of the material and thus creating a elastomeric shell with the desired characteristics. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use any known manufacturing

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process including multi-component injection molding to form and join the two part of elastomeric materials of Juneau for the reasons stated above.

Regarding claim 57, the combination teaches at least one of the first and second parts is an acoustical conductor (fig. 1).

Regarding claims 58-59, the acoustical conductor is formed at an input/output side of an acoustical/electrical transducer of the hearing device (fig. 1).

Regarding claims 60, the combination teaches one of the first and second parts is a resilient bush configured to seat a transducer (fig. 1).

Regarding claim 61, the combination teaches forming and joining a third part (3) of the hearing device integrally with the first and second parts by multi component injection molding (see the rejection of claim 1 with respect to fig. 1).

Regarding claim 62, the combination teaches the first, second, and third parts comprise a housing, a seating bush, and an acoustical conductor (fig. 1).

Regarding claim 63, the combination teaches the second part is a rim portion of a feed-through aperture of a housing (fig. 1).

Regarding claim 64, the combination teaches the first part is a first surface area of a housing for the hearing device and the second part is a second surface area of the housing, the second surface area being adjacent to the first surface area (fig. 1).

Regarding claim 65, the combination teaches the first and second surface areas are differently palpable (col. 5 lines 63-65 and col. 6 lines 5-8).

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Regarding claim 66, the combination teaches mounting a unit (4, 5, 6, 8, 17, 21, etc.) of the hearing device into an opening of a bordering area, the bordering area being formed by the first and second parts.

Regarding claim 67, the combination teaches the unit of the hearing device is a manually operable control element (17, 21).

### ***Response to Arguments***

Applicant's arguments with respect to claims 53-69 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phylesha L. Dabney whose telephone number is 571-272-7494. The examiner can normally be reached on Mondays, Tuesdays, Wednesdays, Fridays 8:30-4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

**Any response to this action should be mailed to:**  
Commissioner of Patents and Trademarks  
P O Box 1450  
Alexandria, VA 22313-1450

**Or faxed to:**  
(703) 273-8300, for formal communications intended for entry and for informal or draft communications, please label "Proposed" or "Draft" when submitting an informal amendment.

**Hand-delivered responses should be brought to:**  
Customer Service Window  
Randolph Building  
401 Dulany Street

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Alexandria, VA 22314

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 10, 2006



PLD



**SINH TRAN**  
**SUPERVISORY PATENT EXAMINER**